

Summary of SC94959, *State of Missouri v. Adriano Raphael Clark Sr.*

Appeal from the Webster County circuit court, Judge Donald C. Cheever
Argued and submitted October 28, 2015; opinion issued June 28, 2016

Attorneys: Clark was represented by Samuel Buffaloe of the public defender's office in Columbia, (573) 777-9977, and the state was represented by Andrew C. Hooper of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals his judgment of conviction for felony possession of a controlled substance. In a 4-3 decision written by Chief Justice Patricia Breckenridge, the Supreme Court of Missouri reverses the judgment and to remands (sends back) the case to the trial court with instructions to discharge the man. There was not sufficient evidence to prove, beyond a reasonable doubt, that the man – with knowledge of the presence and nature of the substance – had possession of the methamphetamine found in closed pouches in the bedroom where the man was seated. Evidence of other items found near the man and the drugs did not constitute additional incriminating evidence necessary to create an inference that the man had knowledge of and control over the drugs.

Judge Paul C. Wilson concurs in result. He believes the evidence was sufficient to prove the man had actual possession of the two pouches and their contents, but it was not sufficient to prove he had “knowledge of the presence and nature” of those contents by knowing the pouches contained the controlled substance methamphetamine. He would reverse the conviction on that basis.

Facts: A police officer responded in February 2013 to a 911 hang-up call reporting an assault in progress at a residence in Marshfield. When he arrived at the residence, the officer made contact with a woman who appeared to have been assaulted. She indicated another person was inside. Upon investigation, that officer and a sergeant found Adriano Clark Sr. sitting on the side of a bed in the residence's east bedroom. They observed large men's tennis shoes next to the bed, and a cell phone and a closed black velvet pouch, among other items, on the nightstand next to Clark. A large closed brown pouch was hanging on the wall near photographs of Clark and the woman. The contents of the two pouches were not visible to the officers, and they did not observe any drugs in plain sight. The officers arrested Clark and searched him. He was not carrying any drugs but did was carrying \$560, consisting of five \$100 and three \$20 bills. Clark indicated all the belongings in the west bedroom were his. The woman subsequently gave the officers written consent to search the residence, which she said was hers. She said Clark was her boyfriend. A detective testified she was holding a cell phone at the time she gave permission for the search. During their search of the east bedroom, the officers opened the two pouches and found scales, drug paraphernalia and plastic bags of crystalline substances that later were determined to be methamphetamine. Police did not find a wallet, other identification or any property identified as Clark's in the east bedroom. The state charged Clark, as a prior and persistent offender, with felony possession of a controlled substance. Following a bench trial (by the judge rather than a jury), the trial court found Clark guilty and sentenced him to 10 years in prison. Clark appeals.

REVERSED AND REMANDED.

Court en banc holds: There is insufficient evidence to support Clark's conviction. Section 195.020, RSMo, makes it unlawful for any person to "possess or have under his control" a controlled substance. By the plain language of section 195.010(34), RSMo, a person must have knowledge of the presence and nature of the substance to have actual or constructive possession to "possess" a controlled substance. In accordance with this statutory definition, as stated in its March 2016 decision in *State v. Zetina-Torres*, this Court long has held that possession itself requires a defendant to have "conscious and intentional possession of the [controlled] substance, either actual or constructive." More than 45 years of decisions of this Court have held that the requirement of "knowledge" precedes and modifies the element of possession. Possession requires conscious and intentional possession of the substance, which requires being conscious of the existence or nature of the substance.

Under section 195.010(34), a person has actual possession of a controlled substance if the person, "with the knowledge of the presence and nature of the substance," has the substance either "on his person or within easy reach and convenient control. Here, Clark did not have any drugs on him, and because the drugs were concealed in closed pouches, mere proximity to the drugs does not create a reasonable inference that he had knowledge of the presence and nature of the methamphetamine in the pouches. A person cannot control a substance if he is not conscious of its existence. Accordingly, Clark did not have "actual possession" of the two pouches. Absent proof of actual possession, the state had to prove Clark constructively possessed the methamphetamine found in the closed pouches.

Because Clark did not have exclusive control over the residence or the east bedroom, the state was required to present additional incriminating evidence to support the inference that he had knowledge and control over the methamphetamine in the two closed pouches in the east bedroom. Because Clark had shared access to the east bedroom, his presence in the east bedroom and his proximity to the closed pouches do not support a reasonable inference that he had knowledge and control over the drugs found in the pouches. Further, the officer who saw the woman with a cell phone was merely speculating that the cell phone on the nightstand near the drugs belonged to Clark. Speculative inferences may not be used to support a verdict. Likewise, even if it were reasonable to infer that the men's shoes, which were found near Clark and in close proximity to the two closed pouches containing the drugs, belonged to Clark, a single pair of shoes found near him as he was sitting on the bed is insufficient to infer that Clark either was aware of or in control of the drugs found in the pouches. Further, the denominations of the bills Clark possessed are not indicative of drug dealing and do not support an inference that he had knowledge of or control over the methamphetamine found in the pouches. The totality of the facts presented by the state and the reasonable inferences drawn from those facts fail to show Clark had constructive possession over the methamphetamine concealed in the closed pouches. Accordingly, no rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of possession of a controlled substance.

Opinion concurring in result by Judge Wilson: The author believes the evidence was sufficient to prove the man had actual possession of the two pouches and their contents, but it

was not sufficient to prove he had “knowledge of the presence and nature” of those contents by knowing the pouches contained the controlled substance methamphetamine. Under this Court’s precedents and the relevant approved jury instruction, proof of possession of a controlled substance requires proof of two separate and distinct elements – possession of a substance and “knowledge of the presence and nature” of that substance. The question in this case is not whether the evidence was sufficient to prove Clark physically possessed the pouches and their contents but rather whether the same evidence also was sufficient to prove Clark actually knew those pouches contained methamphetamine. As to the first question, the author would find – unlike the principal opinion – that the evidence was sufficient for a reasonable factfinder to believe the pouches and their contents were within Clark’s easy reach and convenient control when the officers first found him so as to prove the first element of possession. But as to the second question, the author would find the evidence was not sufficient to prove the second element of knowledge and would reverse Clark’s conviction on that basis. The circumstances surrounding his actual possession of the substance, however, provide no reasonable basis from which to infer that he actually knew both that there was something in those pouches and that the “something” was methamphetamine.